IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos. 38464 and 38465 of 2003
and W.P. Nos. 24581 and 24582 of 2006
and
M.P. Nos.1 of 2006 in W.P. Nos. 24581 & 24582 of 2006

M.Shyamala .. Petitioner in W.P. Nos.38464 of 2003 & 24582 of 2006

S.Vijaya .. Petitioner in W.P. No.38465 of 2003 & 24581 of 2006

vs.

1. The Director of School Education
College Road
Chennai - 6 .. R1 in W.P. Nos. 24581 & 24582 of 2006

2. The Joint Director of School Education
College Road
Chennai .. R1 in W.P. Nos. 38464 & 38465 of 2003 & R2 in W.P. Nos. 24581 & 24582 of 2006

3. The Chief Educational Officer
Kancheepuram .. R2 in W.P. Nos. 38464 & 38465 of 2003 & R3 in W.P. Nos. 24581 & 24582 of 2006

4. The District Educational Officer
Kancheepuram District
Kancheepuram .. R4 in W.P. Nos. 24581 & 24582 of 2006

5. The District Elementary Educational Officer
Kancheepuram .. R3 in W.P. Nos. 38464 & 38465 of 2003 & R5 in W.P. Nos. 24581 & 24582 of 2006

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4. The Secretary
The Hindu Higher Secondary School
Madurantakam
Chengalpet .. R4 in W.P. Nos. 38464 & 38465 of 2003 & R6 in W.P. Nos. 24581 & 24582 of 2006

5. The Secretary
Hindu Coronation Middle School
Madurantakam
Chengalpet .. R5 in W.P. Nos. 38464 & 38465 of 2003 & R7 in W.P. Nos. 24581 & 24582 of 2006

W.P. Nos. 38464 and 38465 of 2003 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records relating to the orders of the first respondent dated 10.4.2003 issued in Ref. No. Thi. Mu. No. 28929/d3 (9)/2003 and the third respondent dated 26.11.2001 issued in Chey.Mu.Ka. No. 4223/a5/2001 and quash the same and direct the respondents 1 and 2 to permit the third respondent to fill the Secondary Grade Assistant in fourth respondent School by transferring the petitioner to the vacant post of the fourth respondent School.

W.P. Nos. 24581 and 24582 of 2006 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records of the fifth respondent comprised in his proceeding Na.Ka. No. 3580/A3/2005, dated 22.5.2006 and quash the same and consequently directing the respondents 3 to 5 to transfer the petitioner from the seventh respondent School to the sixth respondent School in vacancy of Secondary Grade Assistant which arose on account of retirement.

For Petitioner : Mr. J. Selvarajan
in all the petitions

For RR1 to 3 : Mr. P. Gopiraja, GA
in W.P.Nos. 38464 &
38465 of 2003 and
For RR1 to 5
in W.P.Nos. 24581 &
24582 of 2006

For the Hindu Higher : Mr. Vijayakumar Subramaniam
Secondary School
Respondent -4 in WP.38464 & 38465 of 2003 and
Respondent -6 in W.P.No. 24581 & 24582 of 2006

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C O M M O N O R D E R

In W.P. Nos. 38464 of 2003 and 24582 of 2006, the petitioner is one M. Shyamala and in W.P. Nos. 38465 of 2003 and 24581 of 2006, the petitioner is one S.Vijaya. In W.P. Nos. 38464 and 38465 of 2003, the petitioners seek for quashing the orders dated 10.4.2003 as well as 26.11.2001 passed by the first respondent Joint Director of School Education and the third respondent District Elementary Educational Officer respectively and to permit the third respondent to fill up the vacancy of Secondary Grade Assistant in the fourth respondent Hindu Higher Secondary School by transferring the petitioner to the vacant post. In W.P. Nos. 24581 and 24582 of 2006, the petitioners seek to quash the proceedings dated 22.5.2006 passed by the fifth respondent District Elementary Educational Officer, Kancheepuram, and to transfer the petitioners from the seventh respondent Hindu Coronation Middle School to the sixth respondent Hindu Higher Secondary School.

2. Initially, this Court, by an order dated 10.4.2006, directed the District Elementary Educational Officer, Kancheepuram, to consider the request of the petitioners since two vacancies had arisen in that school. The other prayer directing them not to fill up the post pending the writ petitions was dismissed by this Court. Subsequently, this Court, by an order dated 03.8.2006, directed the Secretary of the Hindu Higher Secondary Schoo, Madhuranthakam, to keep one post vacant in respect of each of the petitioners for a period of four weeks. Pursuant to the interim oder passed by this Court, the District Elementary Educational Officer, Kancheepuram, by his proceedings dated 22.5.2006, rejected the request of the petitioners, which became the subject matter of the subsequent two writ petitions, viz., 24581 and 24582 of 2006. The authority has held that the School at Madhuranthakam does not come within the purview of the District Elementary Educational Officer, Kancheepuram and it was also informed that henceforth, for the classes in the middle school sections, viz., VI to VIII Standards, the Government, by G.O. Ms. No. 100, Education Department dated 27.6.2003, has decided that only graduate teachers should be appointed. Further, the Director of School Education, vide his circular dated 23.01.2004, informed that henceforth, from primary schools and middle schools, by virtue of re-deployment, no teachers can be appointed to High Schools and Higher Secondary Schools. It was further stated that when a Junior Grade Graduate Teacher was appointed in a middle school, subject wise rotation will have to be formed and, therefore, they were informed that when they are working in Madhuranthakam Hindu Coronation Middle School, they cannot be transferred in respect of the vacancies in the Hindu Higher Secondary School.

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3. I have heard the arguments of Mr. J. Selvarajan, learned counsel appearing for the petitioners, Mr. P. Gopiraja, learned Government Advocate representing the official respondents and Mr. Vijayakumar Subramanian, learned counsel appearing for the Hindu Higher Secondary School and have perused the records.

4. The petitioners were originally working in the Hindu Primary School at Madhuranthakam and on re-deployment basis, they were transferred to Hindu Coronation Middle School at Madhuranthakam along with the post. It was this order, which was originally challenged by the petitioners in W.P. Nos. 38464 and 38465 of 2003. This challenge came to be made after a period of two years. Several representations were sent by the petitioners and the Department also vide communication dated 10.4.2003 informed that only Graduate teachers can be appointed in the Middle School section and, therefore, the petitioners' request cannot be entertained.

5. A common counter affidavit was filed by the fifth respondent District Elementary Educational Officer, Kancheepuram, justifying the petitioners' original re-deployment that it was done pursuant to the norms prescribed in G.O. Ms. No. 525 School Education Department dated 29.12.1997. There is no challenge to the impugned order of the year 2001 by the petitioners that they were not actually surplus to the requirement of the school.

6. A common counter affidavit dated 16.4.2007 has also been filed by the Hindu Higher Secondary School, Madhuranthakam, stating that the School was willing to take them back. But, however, what has to be seen in the present context is that the petitioners were originally transferred along with the posts on a re-deployment basis on the ground that they had become surplus to the requirement of the School. The original transfers were made on that ground and but for the re-deployment, the petitioners will have to be sent out of the school. It is not a case of transfer but it is a case where the petitioners were transferred along with the posts with a view to protect their employment. Therefore, they get transplanted to the new School, thanks to the orders of the Government. However, for any subsequent vacancy in any post in the original school of appointment, there is no guarantee for the petitioners to be re-transferred as it is not a case of simple transfer but re-deployment along with the post. Unless the school justifies a creation of another post in which the petitioners can be accommodated, the question of re-transfer to the original school does not arise. If any vacancy arises in that school, then the School will have to justify the filling up of those vacancies and only if the School gets prior approval for filling up those vacancies, the petitioners can be transferred. Further, the School Management itself has no power to act on their own. Even if any vacancy arises, then the School will have to go by the existing policy and the Government Order in this regard to fill up those vacancies.

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7. In the present cases, subsequent to the re-deployment of the petitioners, the Government has taken a policy decision to fill up the middle school vacancies only with Junior Grade Graduate Teachers and that too, by following subject wise rotation. Further, for the policy of the Government not to transfer the teachers from Elementary School to Higher Secondary School, no teacher can be found fault with. Even though the petitioner School Management had expressed their desire to take back the petitioners, it is not within the hands of the School Management as the School Management is bound by the Government Orders and has to fill up vacancies in accordance with the rules and regulations.

8. In view of the above, the writ petitions are misconceived and deserve to be dismissed. Accordingly, they are dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

gri

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director of School Education
   College Road, Chennai - 6

2. The Joint Director of School Education
   College Road,Chennai

3. The Chief Educational Officer
   Kancheepuram

4. The District Educational Officer
   Kancheepuram District
   Kancheepuram

5. The District Elementary Educational Officer
   Kancheepuram

+ 2 ccs to Mr. J. Selvarajan, Advocate sR 68198 & 68199

DM (co)

sg 27/11/07

Pre-Delivery Common order in
W.P. Nos.38464 and 38465 of 2003 &
24581 and 24582 of 2006
Delivered on 16..11..2007

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